IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.3.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.387 of 2006

St.Thomas Mount Babies Home
Holy Apostles Convent
rep. by its Secretary
St.Barbara, St.Thomas Mount
Madras 16.
(In the matter of Hindu Adoption and maintenance
Act 1956 and in the matter of minor
famal Sahana @ Indhu born on 29.3.2005) .. Petitioner

Revision Petition filed under Sec.115 C.P.C., against the order and decretal order passed in Ad.O.OP.No.617/2005, on the file of the IV Addl.City Civil Court, Madras, dated 28.12.2005.

For Petitioner : Ms.M.B.Dominique

ORDER:

This Revision Petition is against the order dated 28.12.2005 passed in Ad.O.P.No.617/2005 on the file of the IV Additional City Civil Court, Madras dismissing the petition filed under Sec.9(4) of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter called 'the Act') seeking permission to give in adoption of minor child Sahana alias Indhu to the adoptive parents G.Ranganathan and R.Ananthi.

2. The petitioner is the Foster Care Unit and one of the institutions of the Society of the Holy Apostles Convent St.Thomas Mount, Chennai.16. It was founded for the very purpose of looking after destitute and abandoned children and provide them with a Home and residential accommodation and also looks after the abandoned children with love and care. The Home is recognised by the Ministry of Social Welfare, Government of India under certificate No.3/2004, dated 2.6.2004. One of the main tasks of the petitioner institution is to find out foster parents in India for abandoned children.

3. The case of the petitioner is that the minor female child by name Sahana was surrendered by her parents Kanthasamy and Chinnammal on 30.3.2005 to the Salem Cradle Babies Illam due to poverty. The minor child was born on 29.3.2005 as the third female child for her parents. On 12.4.2005 the minor child was transferred to the petitioner Home and ever

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since the minor Sahana was surrendered by her parents, nobody came to see or claim her. On 21.7.2005, the Home handed over the minor Sahana to Mr.G.Ranganathan and Mrs.R.Ananthi under Foster Care Agreement and the minor child was four months at the time of filing the petition. The petitioner Home after being fully satisfied about the social status, financial conditions and their earnestness in having a child of their own, has consented to give the minor child to the proposed adoptive parents. Accordingly, they handed over physical custody of the minor Sahana to the adoptive parents under the Foster Care Agreement dated 21.7.2005. The petitioner in their capacity as the guardian of the minor child, filed the Ad.O.P.No.617/2005 for permission to give the child in adoption.

4. The learned IV Additional City Civil Judge, Chennai dismissed the petition on the ground that since the petitioner Home have not obtained a declaration from the court to act as guardian for the minor child as per sub-sections (4) and (5) of Sec.9 of the Act, the Home has no right to give the child in adoption. Challenging this order, the above Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioner and have gone through the documents filed in support of this case.

6. Sec.9 of the Act 1956 reads as follows:-

> "9. Persons capable of giving in adoption:-(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.
>
> (2) Subject to the provisions of (sub-section(3) and sub-section (4)), the father, if alive, shall alone have the right to given in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
>
> (3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
>
> (4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

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(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation:- For the purposes of this section -

(i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother.

(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-

(a) a guardian appointed by will of the child's father or mother, and

(b) a guardian appointed or declared by a court and

(ii) "court" means the city or civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides."

7. We are for the present concerned with sub-sections 4 and 5 and the Explanation given under Section 9 of the Act.

8. A close reading of the above provisions would make it very clear that the person having a care of the person of a child or both of the person and property can give the child in adoption with the previous permission of the court.

9. In this case, the petitioner is the person having the care of the minor child and therefore the petitioner is the guardian as per Explanation (ia) of Sec.9 of the Act. Moreover, the original parents abandoned the minor child and surrendered her to the cradle baby Illam and thereafter the minor child was transferred to the petitioner Home for custody and protection by the State Government. The Indian Council for Social Welfare, Tamil Nadu, State Branch has also recommended that the proposed parents would be suitable adoptive parents for the minor child. In such circumstances, I hold that the petitioner is the guardian under Sec.9 of the Act and they can give the minor child in adoption with the permission of the court. Therefore, the IV Additional City Civil Judge without considering the Explanation (ia) of Sec.9 of the Act as stated above, i.e., the expression 'guardian', erroneously held that the petitioner institution is having no right to give the minor child in adoption as they have not obtained any declaration from the court to act

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as guardian for the minor child. To that extent the order of the learned IV Additional City Civil Judge is set aside by holding that the petitioner Home can maintain the application under Sec.9(4) of the Act.

10. But the learned IV Addl.City Civil Judge has found out certain other irregularities in the petition especially in Ex.P6 which is the application form filed by the adoptive parents to the petitioner Home. The learned Judge recorded that in column VI of Ex.P6, details of clinical tests undergone and medical certificate of Gynecologist are pre-requisite, if childlessness is the motive for adoption, but details of clinical tests undergone and the medical certificate of the gynecologist were not enclosed along with the application (Ex.P6). In such circumstances, the adoptive parents are directed to provide the necessary details and certificate to remove the irregularities pointed out by the court below and thereafter the learned IV Addl. City Civil Judge is hereby directed to consider these details, within a week from the date of receipt of these particulars and pass orders on merits without going into the competency of the petitioner Home to file the O.P. Under Sec.9(4) of the Act.

11. In view of the above, I am remanding the Ad.O.P.No.617/2005 to the learned IV Addl. City Civil Judge for fresh consideration and disposal on the above lines. With the above observations, this Revision Petition is disposed of.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The IV Additional Judge, City Civil Court, Chennai.
2. The Registrar, City Civil Court, Chennai.104

1 cc To Miss.M.B.Dominique, Advocate, SR.13984.

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RVL 27.03.2006

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